

## SENATE BILL NO. 159

INTRODUCED BY J. SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE DEFENSE OF CONSENT TO A CHARGE OF STATUTORY RAPE IF THE VICTIM IS MORE THAN 14 YEARS OF AGE AND THE OFFENDER IS NO MORE THAN 3 YEARS OLDER THAN THE VICTIM; AMENDING SECTION 45-5-501, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 45-5-501, MCA, is amended to read:

**"45-5-501. Definitions -- exceptions.** (1) (a) As used in 45-5-503, the term "without consent" means:

(i) the victim is compelled to submit by force against the victim or another; or

(ii) subject to subsections (1)(b) ~~and (1)(c)~~ through (1)(d), the victim is incapable of consent because the victim is:

(A) mentally defective or incapacitated;

(B) physically helpless;

(C) overcome by deception, coercion, or surprise;

(D) less than 16 years old;

(E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(F) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(II) is an employee, contractor, or volunteer of the youth care facility; or

(G) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(II) is an employee, contractor, or volunteer of the facility or community-based service.

(b) Subsection (1)(a)(ii)(E) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

(c) Subsections (1)(a)(ii)(F) and (1)(a)(ii)(G) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(d) Subsection (1)(a)(ii)(D) does not apply if the victim is more than 14 years of age and the offender is no more than 3 years older than the victim.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) "Parole":

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) "Probation" means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) "Supervising authority" includes a court, including a youth court, a county, or the department of corrections."

**NEW SECTION. Section 2. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to criminal charges brought before, on, or after October 1, 2007, which have not been resolved by a plea agreement, verdict, or judgment by that date.

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